

BILL ANALYSIS

SENATE JUDICIARY COMMITTEE
Adam B. Schiff, Chairman
1999-2000 Regular Session

AB 969	A
Assembly Member Papan	B
As Amended May 18, 1999	
Hearing Date: July 7, 1999	9
Civil Code	6
DLM:cjt	9

SUBJECT

Debt Collectors

DESCRIPTION

This bill would incorporate by reference selected provisions from the Federal Debt Collection Practices Act (FDCPA). Specifically, this bill would:

Adopt the provisions of the Federal Debt Collection Practices Act relating to: acquisition of location information; communication in connection with debt collection; harassment or abuse; false or misleading representations; unfair practices; validation of debts; multiple debts; legal actions by debt collectors; and furnishing certain deceptive forms.

Exclude any officer or employee from the requirements relating to initial disclosures and validation of debts, while that person is acting as a debt collector for another person, if both persons are related by common ownership or affiliated by corporate control. (In other words those companies collecting their own debts.)

Specify that remedies for violation of the fair debt collection procedures include: actual damages and up to a \$1,000 penalty for individual violations, and; actual damages and up to \$500,000 or 1 percent of net worth penalty together with costs of suit and attorney's fees to the prevailing plaintiff(s) for class actions.

(more)

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BACKGROUND

Debt collection practices in California are governed by both federal and state law. The Federal Debt Collection Practices Act, and state Robbins-Rosenthal Fair Debt Collection Practices Act were both enacted in 1977. According to The Fair Debt Collection Practices Acts, (Cont. Ed. Bar 1999), "Congress enacted the federal FDCPA on findings of abundant abusive, deceptive, and unfair collection practices; abusive debt collection practices that contributed to bankruptcies, family instability, job loss, invasion of privacy; inadequacy of existing law to protect consumers or to provide redress for these injuries; and the need to regulate the collection of consumer debts and provide uniform laws against unethical debt collection practices. California's Legislature responded similarly by enacting the Robbins-Rosenthal Fair Debt Collection

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Practices Act." Id.

CHANGES TO EXISTING LAW

1. Existing law prohibits unfair debt collection activities including making of threats, using obscene language and making misrepresentations in the attempt to collect debts, or information about debtors. It allows limited contact with third persons, such as employers and family members.

This bill would provide that every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of Title 15 of the United States Code. These sections provide, among other provisions, that a collector may not harass, oppress, or abuse a debtor, nor use obscene language. Third parties may only be contacted with the debtor's permission.

2. Existing law provides penalties for violation which include actual damages, and penalties of no less than one hundred dollars (\$100) nor no greater than one thousand dollars (\$1,000). Attorneys fees are also available to prevailing debtors, and to prevailing creditors if the court finds the debtor's action to be brought in bad faith. California law does not provide for class actions.

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Existing law allows a debt collector in violation to escape liability if:

A debt collector within 15 days either after discovering a violation which is able to be cured, or after the receipt of a written notice of such violation, the debt collector notifies the debtor of the violation, and makes whatever adjustments or corrections are necessary to cure the violation with respect to the debtor, or;

If the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation.

This bill would provide that violators shall be subject to the remedies in Section 1692k of Title 15 of the United States Code, which contains the following remedies for violation:

Actual damages and up to a \$1,000 penalty for an individual violation;

All actual damages and an amount not to exceed the lesser of up to \$500,000 or 1 percent of net worth penalty together with costs of suit and attorney's fees to the prevailing plaintiff(s) for class actions.

This bill would allow a defense for collectors acting with a good faith belief that their action is in conformity with FTC regulations.

This bill would exclude any officer or employee from the requirements relating to initial disclosures and validation of debts, while acting as a debt collector for another person, if both are related by common ownership or affiliated by corporate control, (in other words a company collecting its own debt) as specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code subsection (11) of Section 1692e and Section 1692g.

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COMMENT

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1. Stated need for legislation and support

According to the author, "Because of our current law, violations of the Fair Debt Collection Practices Act are honored more in the breach than the observance and there is no meaningful incentives for debt collectors to comply. In addition, as demonstrated by a recent pattern of conduct by a major national retailer in fraudulently inducing debtors to validate debts after bankruptcy, absent the threat of a class action, there is no incentive to abort an illegal continuing course of conduct."

Supporters state that the bill is needed to address a growing problem. "Complaints about unfair and unlawful debt collection practices are one of the most frequent consumer problems according to the Federal Trade Commission," claims Consumers Union. "These practices include verbal harassment, telephoning consumers repeatedly within a short period of time, calling consumers at work, and contacting employers, family and neighbors about a consumer's alleged debts. Other problems involve misrepresentations, such as threats to commence civil or criminal proceedings, to garnish wages or repossess homes immediately, or to have consumers arrested or jailed, when no such intent or rights exists."

The bill's sponsor, the Attorney General, (AG) adds, "the Attorney General's office has sponsored AB 969 to harmonize state and federal law by applying federal debt collection standards and remedies to all parties defined as debt collectors under California law."

2. Problems with existing state law

The area of current law, which is of most concern to the proponents of this legislation, is the ability for violators to escape liability if they cure the impact of their illegal practice. Supporters argue that there is no deterrent in the existing law, and that debt collectors can flaunt the law with no threat of accountability. If any practice is complained of, all a company must do is stop calling, writing, harassing that person, and they are safe from punishment. In addition,

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the law limits damages to actual harm, which often means no monetary loss, as the harm to the consumer is the distress and hardship caused by the incessant presence of the debt collector. In the event a group of persons is affected, the culprit can still escape liability for all harm caused to consumers, unless each and every consumer brings a complaint. This is highly unlikely, a fact those engaged in improper debt collection practices can bank on.

Another issue of concern for proponents is the interplay of federal and state law. The federal Fair Debt Collection Practices Act only preempts state law to the extent of any inconsistency. A state law is not

inconsistent if the protection such law affords any consumer is greater than the protection provided by the federal Act. However, the FTC must exempt by regulation any class of collection practices regulated by a state law that is substantially similar if there is adequate enforcement under state law. This would, theoretically, allow state law to prevail, even if a more strict federal law were in place.

This dual scheme of regulation can sometime become confusing, rendering state law unused. The sponsor argues that this bill is needed in order to establish clear lines of acceptable behavior, pointing out that other states, such as Pennsylvania and Massachusetts have similarly incorporated federal provisions to harmonize state and federal law. The AG adds that, "consistent federal and state standards would facilitate compliance and enforcement and provide a level playing field for all engaged in debt collection activity."

3. Federal law references translated

This bill would incorporate by reference certain provisions of federal law. Perhaps a translation would be helpful. The bill provides that every consumer debt collector shall comply with the provisions of Sections 1692b to 1692j of Title 15 USC. The following is a synopsis of those provisions:

Section 1692b is the section dealing with how one may communicate with third persons in trying to locate a

debtor. It generally prohibits collectors from identifying themselves as collectors to friends, family, etc?unless asked.

Section 1692c deals with how the collector may communicate with the debtor, e.g. no late night calls, no direct communication with a person represented by council, cessation of calls once the consumer notifies the collector in writing of their intention not to pay the debt.

Section 1692d prohibits harassment and abuse.

Section 1692e prohibits false or misleading representations.

Section 1692f proscribes unfair practices, such as charging excessive interest, accepting checks postdated beyond five days, causing the debtor to incur costs associated with collection activities such as telegram fees and threatening judicial action without intent to actually go to court.

Section 1692g requires that the debtor be given the true amount of the debt, the name of the creditor to whom the debt is owed, and explanation that the debtor may contest the debt.

Section 1692h provides for distribution of payment among accounts when a person has multiple debts for which the collector is receiving payment.

Section 1692i provides for venue for any legal action to be the place where the contract giving rise to the debt was signed, or where the real property is located, for contests related to the property.

Section 1692j prohibits the use of deceptive forms which shield the identity and nature of the debt collectors communication with the debtor.

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4. Suggested technical amendment

The bill references and incorporates sections of the federal code, without giving reference to an applicable

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point in time. This may cause a conflict if the federal law is amended. The question may arise as to what the intention of the Legislature is: to establish a set time for reference; to alter the California codes whenever federal codes are amended; and would that be a delegation of our legislative authority to amend our statutes? While the author intends to incorporate federal judicial interpretations of the federal provisions referenced in the bill, he states that it is not his desire to delegate to the federal government the ability to amend California statutes by legislative fiat. In that case, the bill should be amended to reference the federal codes as of a date certain.

SHOULD THE BILL BE AMENDED TO CLARIFY THAT REFERENCES TO THE FEDERAL CODES REFER TO THOSE PROVISIONS AS THEY READ JANUARY 1, 2000?

Support: Consumers Union

Opposition: None Known

HISTORY

Source: Office of the Attorney General

Related Pending Legislation: None Known

Prior Legislation: None Known

Prior Vote: Assembly Banking & Finance Committee 11-0;
Assembly Floor 63-16

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